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Current Topics.

A Mediæval Library.

A RECENT article in *The Times* on "The Chapter Library at Windsor," from the pen of Canon DEANE, the Librarian, has an interest not only for those who find a fascination in the story of the growth of great collections of books, but likewise for members of the legal profession, for we are told that in 1410 the Dean and Canons possessed no more than thirty-four volumes, "all of them works of theology or law"—a collocation of subjects not considered then, as perhaps they would be now, as having nothing in common, for it will be borne in mind that our early lawyers were churchmen whose studies therefore lay in both theology and jurisprudence. Unfortunately those early volumes on law are not identified by the learned librarian, but we may assume that what were even by then legal classics, the "Tractatus de Legibus" attributed to Ranulf de Glanvil, which has been described as "the first principal text-book of English law," and the "De Legibus" by Henry Bracton or Bratton, were among the number. Of the latter work, Mr. FIFOOT has said that its production is evidence that a generation of professional lawyers had arisen, replacing the ecclesiastical amateurs who had brought to the administration of Norman justice a sufficient smattering of legal jargon. A library consisting only of thirty-four volumes may to the modern student seem of little account; but we must never despise the day of small things. Before the invention of the printing press the production of books was painfully slow, and consequently they were fewer in number and the field of study for the lawyer was less extensive than it is to-day, when every sub-division of law is provided with an almost embarrassing supply of text-books calling for perusal.

The Investigation of Crime.

THE Committee appointed in April, 1935, "to advise the Secretary of State for the Home Department as to the manner in which the Laboratory for the Scientific Investigation of Crime, about to be established in the Metropolitan Police Force, may best be developed in the national interest, with special regard to the desirability of its being in close and effective touch on the one hand with other police institutions established in this or other countries for the like or cognate purposes and on the other hand with any Medico-Legal or Scientific Institute that might be constituted for teaching and research work in forensic medicine or other relevant sciences," has now presented an Interim Report, which was recently published by H.M. Stationery Office (Report of the Advisory Committee on the Scientific Investigation of Crime, price 2d. net). The original members of the Committee were LORD TRENCHARD (Chairman), LORD ATKIN (Vice-Chairman), LORD DAWSON OF PENN, Sir RUSSELL SCOTT, Sir EDWIN DELLER, Sir BERNARD SPILSBURY, Sir FRANK SMITH, Sir ROBERT ROBERTSON, and Mr. HUGH LETT. Sir FREDERICK MENZIES was appointed about six months, and Dr. A. S. MACNALTY about a year, after the constitution of the Committee. The report is unanimous. Since its appointment the Metropolitan Police Laboratory has, as readers know, been established, and, the Committee intimates, on sound lines. While still to some extent in the experimental stage—much more time must, it is observed, necessarily elapse before the work can be regarded as having found its proper level and any degree of stability has been reached—the Committee is satisfied that "its development may be expected to follow naturally upon an increasing realisation of its value as a part of the crime-fighting machine." However, though the organisation within the police service of a comprehensive laboratory system for the purpose of bringing the resources of science to bear upon the investigation of crime is recognised as a development of immense value to be pressed forward without delay, such development will only solve one part of a larger problem. To deal comprehensively with the subject it will be necessary to go beyond the restricted field of purely police requirements, for the problem, the Committee states, "is not confined to the restricted sphere of criminal investigation and police practice; it extends, for instance, to such problems as the provision of proper facilities for the study of industrial disease, to the manifold problems which arise out of the general range of post-mortem work, and, most important of all, to the general treatment in the academic sphere of the whole question of medico-legal practice."

A Medico-Legal Institute.

IN this Interim Report, therefore, the Committee has concentrated upon recommendations having for their object the making good of existing deficiencies in the provision of proper facilities for the teaching and practise of forensic medicine in this country. A National Medico-Legal Institute should, it is recommended, be established in London giving ample facilities for three separate but interrelated branches of activity—teaching, routine work, and research. In order that the institute should have a recognised place in the academic sphere, it should be established as a school of the University of London in the Faculty of Medicine. So far as teaching is concerned, the proposed institute would provide a specific course of post-graduate training in forensic medicine which, it is hoped, would lead to the award of a diploma by the University. Separate courses of instruction would also be provided for students of law and for persons, or bodies of persons, whose duties require, or would benefit by, more detailed knowledge of forensic medicine. Police surgeons and coroners are instanced as classes of persons needing a more detailed knowledge of the subject than the ordinary medical practitioner or lawyer, though the viewing of the subject as specialised and as one only to be taken by those who definitely intend to adopt a career for which it would be essential is

deprecated. The routine work of the institute would proceed side by side with, and as an integral part of, its academic functions. It should be fully equipped with the necessary pathological, bacteriological, chemical and physical laboratories and should be adequately staffed in light of the functions it should undertake. An adequate library and a museum of exhibits built up for the use both of those undergoing instruction and of outside workers in the medico-legal sphere are also posited as necessaries. Ample opportunities for the conduct of post-mortem examinations over a wide range, not necessarily confined to cases involving a suggestion of criminality, are regarded as essential to the proper discharge of its teaching functions and suitable equipment with a mortuary and facilities for the conduct of post-mortem work would have to be provided.

Research.

Such an institute, the Committee states, would naturally, and as a matter of course, become a centre for research in the medico-legal sphere, upon the fundamental importance of which it is thought unnecessary to enlarge. It is suggested, however, that the prosecution of research should not be entrusted only to the initiative of the staff, but that specific steps should be taken to encourage research activities by making the institute a recognised centre to which problems of research should be referred by outside bodies, subject to the ultimate control of the directing body of the institute. It is further recommended that close co-operation should be maintained with other institutions carrying out research in related spheres, such as those examining the development of psychological medicine. In regard to its general conclusion, the Committee recognises that a great deal of detailed work will have to be done before the scheme can take final shape—consultation with authorities of London University and public authorities, such as the London County Council, both with regard to the principles involved and the detailed arrangements for giving effect to them are cited as obvious examples—nor, pending the submission of the foregoing proposals, has it been thought necessary to make any specific recommendations with regard to the financial aspect of the scheme or the considerations which should govern the situation of a site and the actual planning of the institute.

Committee on Coroners' Inquests.

One further point should be mentioned. Reference is made to the fact that special qualifications in forensic medicine and post-mortem work are not at present required as a necessary condition to the undertaking of medico-legal post-mortem examinations, "and," the report states, "in too many cases these examinations have been carried out by men who cannot, on any reasonable basis, be regarded as competent to perform them." This is regarded as a serious matter from the point of view of crime, and still more serious from the point of view of the development of this side of medical science. The committee draws attention to the fact that the need for measures designed to remedy this state of affairs was recognised by the Departmental Committee set up to inquire into the law and practice relating to coroners, whose recommendations were summarised in our issue of 15th February last, on p. 120, and welcomes the recommendation that coroners should normally be required to employ for post-mortem examinations pathologists whose names appear on a list to be kept by the Home Office in collaboration with an advisory committee of medical men. Entire agreement with that committee is also expressed that if a medico-legal institute were to be established as a training centre for medico-legal experts and as a centre for pathological research, a diploma or degree (the recognition would, the committee thinks, probably take the form of a certificate) from the institute might very properly become a qualification for appointment to the list. Attention is drawn in this connection to the absence of any sufficient incentive to the establishment of adequate teaching facilities from which it follows, it is intimated, that the provision for research is also seriously defective and that facilities for the spread of new knowledge are starved. "In these circumstances," it is said, "we make no excuse for having concentrated upon this general problem and for submitting . . . at this stage an interim report in which we attempt to deal with it. We recognise, of course, that in doing so we may be regarded as having gone beyond the strict limitations of our terms of reference, since the recommendations we propose to make cover a wider field than that of any organisation related solely to police requirements. This enlargement of the ambit of our inquiry was inevitable, as it would have been impossible for us to ignore the patent defects of the existing system." We have dwelt upon this report at some length, but the importance of the subject and the inherent desirability of the legal and medical professions co-operating in this sphere where both are vitally concerned as well as the comparative neglect in this country, so far as the provision of facilities is concerned, of a subject which has received far more adequate treatment elsewhere justifies in our view a somewhat extended reference. Readers may be strongly recommended to peruse for themselves the report which is published as above indicated.

Preserving Rural Amenities.

At this season when many of our readers will be enjoying, or contemplating the enjoyment of, the countryside, reference to some matters related to the preservation of its beauty may, perhaps, be regarded as opportune. Some apprehension may have been experienced of the possible effect of operations connected with boring for oil, licences for which have been granted under the Petroleum (Production) Act, 1934, on a large scale. Prospecting areas for which licences have been granted now cover something like 7,500 square miles, including parts of Kent, Sussex, Hampshire, Surrey, Berkshire, Wiltshire, Dorset, Leicestershire, Rutland, Cambridgeshire, Norfolk, Lincolnshire, Yorkshire, Mid-Lothian and East Lothian. In a recent instance of this activity it is stated that during the drilling the derricks will be encased in sheet metal to prevent the dispersal of mud and oil, while the company concerned points out that it has been possible in Roumania to drill deep wells in the middle of large vineyards without damaging the grapes. According to a recent paragraph in *The Times*, Sir Lawrence Chubb, secretary of the Commons, Open Spaces and Footpaths Preservation Society, recently stated that the society has received gratifying assurances from the oil companies that rural amenities will be protected, that there will be no injury to public interests or to commoners' rights, and that no commons will be touched without the society being first consulted. Turning to another matter, the preservation of windmills, in which the Society for the Protection of Ancient Buildings has interested itself to good purpose, an official of the society recently stated that attempts to obtain funds for the preservation of windmills have revealed that it is much more difficult to secure support for the repair of mills still in use than for those which are merely picturesque landmarks. This is unfortunate, suggesting as it does the more ready envisaging of the countryside as a home for monuments, which it is not, than the scene of activity, the more genuinely because unconsciously picturesque, which it may very well be. Possibly the seeming inconsistency may be explained, at least to some extent, by the relative urgency of the needs in the various cases.

Recent Decision.

In *Re Holland, deceased* (*The Times*, 27th August), it was held that in view of the provisions of s. 160 (1) of the Supreme Court of Judicature (Consolidation) Act, 1925, probate of a will could not be granted to four general executors and one literary executor, and an *ex parte* application asking that the oath tendered by the five executors with a view to a grant of probate of the estate in question might be received was refused by the Vacation Court.

The New Rules. R.S.C. No. 3, 1936.

SHIP'S PAPERS.—I.

Use and Abuse of Previous Procedure.

THE new Rules of the Supreme Court (No. 3), 1936—which came into operation on the 13th of July—quietly and expeditiously introduce some fundamental and much needed amendments. In this article, and in the next, it is proposed to consider of these, one only: the production of ship's papers. To appreciate the point of the changes, it is necessary to know something of the procedure previously followed.

The Third and Final Report of the Business of Courts Committee (1936, Cmd. 5066), presented to Parliament in January, made recommendations upon this subject (and also upon Crown Office Rules and the procedure in patent actions), and the new amendments appear to have been introduced to give effect to their recommendations.

This prompt activity of the Rule Committee is highly to be commended and the Reports of the Business of Courts Committee have been invaluable. But we cannot forbear from expressing the view that the time has already arrived when either a specially appointed committee, or a Royal Commission, or even the Rule Committee itself—whichever body is more appropriate and can tackle the task—should consider, as a whole, the anomalies of procedure. To some of these, from time to time, learned judges refer, and of many the Rule Committee make amendment. But has not the whole *corpus* of civil procedure long been in need of exhaustive examination? Is not its whole technique far too cumbrous, and does it not require simplification? We feel sure that a compact and authoritative body, drawn from the Judiciary, the Bar, The Law Society and the public teachers of law would succeed, after a few years of labour and research, in drawing up a Revised Version of the Rules of the Supreme Court, of less formidable a character than is to be found in the "Annual Practice," simpler for practitioners, less productive of the need for judicial decision, more consonant with modern notions, and weighing less hardly upon the litigant.

1. *Origin of the Rule of Ship's Papers.*

In *Leon* v. *Casey* [1932] 2 K.B. 576, 578-587, Scrutton, L.J., gave an account of the origin of the rule of ordering the production of ship's papers—an order which is made, as, of course, in an action upon an insurance policy which, though land risks are included, is substantially a marine policy. (The adventure in this case was from Cairo to Alexandria by land, and thence, by sea, to Jaffa.)

He pointed out there that whereas the usual order for discovery is made *after* the pleadings are closed and relates only to documents which are, or have been, in the possession of *the other party*, an order for ship's papers may be made

> "before the statement of claim is delivered and covers a much wider range, in that it requires the plaintiff to produce from all persons interested, not only in the policy but in the adventure to which the policy relates, all material documents in their possession, or else to show that he has tried and failed to get them" (at p. 579).

Until this order is complied with, all proceedings must be stayed.

2. *Threefold Stringency.*

The Committee indicate the three respects in which this order differs stringently from the usual order for discovery: the persons required to swear; the range of the documents to be discovered; and the stay of proceedings. (Cmd. 5066 at p. 18, s. 47.)

3. *Its use.*

The reason is historical and the Committee have quite properly felt that the time has come when that procedure might, with advantage, be amended.

The order goes back to the days of Lord Mansfield, when the courts of common law did not give discovery. A bill in equity was necessary, and this was bound to delay the pending action at law. Since insurance has always been regarded as a transaction involving the utmost disclosure by the assured, and since, as a rule, it is only the assured who is in a position to know or ascertain all the facts, say of a marine adventure, the order for ship's papers was invented: *Goldschmidt* v. *Marryat* (1809), 1 Camp. 559, 561, 562, per Sir James Mansfield, C.J. This was made as soon as the writ was issued. *All* documents had to be disclosed, whoever had them, of persons interested in *the adventure*, as well as in the policy. When insurance, originally chiefly marine, was extended to other spheres, this order was not at the same time extended, but continued to apply only to policies substantially of marine insurance (although land transit was involved): *Harding* v. *Bussell* [1905] 2 K.B. 83: "The underwriter is entitled at the earliest moment to know whether he ought to pay or not. The information must be placed at his disposal by an affidavit of ship's papers": per Mathew, L.J. (at p. 86).

4. *Its Abuse.*

Greer, L.J., in *Leon* v. *Casey*, strongly expressed the view that the order for ship's papers should be modified: upon his view, no doubt, the matter was referred to the committee: in pursuance of their recommendation, the procedure—as will appear—has since been modified.

The learned Lord Justice said: ". . . the order for ship's papers was invented at a time when it was necessary in order to do justice to the case of the insurer; it has now become an unfair and unjust weapon in the hands of the insurer. I have known of case after case in the Commercial List where defendants, who had no real defence, have been enabled by means of this instrument of oppression to keep plaintiffs out of their insurance money for long periods of time; and I regret that the court has not felt itself justified in holding a tighter hand upon this practice than it has done" (at pp. 588, 589). He suggested that it would be possible to confer on the judge hearing the summons for directions, a discretion whether to make the order or not, according to whether he thought that the practice was being used "for the necessary purpose of justice . . . or is being abused as a means of oppression in the hands of the insurance company or Lloyds' underwriter" (at p. 589). The change would be welcome to "all who desire justice and that there shall be a speedy end to litigation." (The learned Lord Justice was not, one hopes, contemplating an end to *all* litigation (*absit omen!*) but simply an expeditious conclusion of a *bonâ fide* claim, *the* litigation in question.)

5. *Previous Procedure.*

The Committee point out that it was necessary for a goods owner claiming for a loss at sea to obtain and disclose all the documents in the possession of the shipowner (Cmd. 5066, p. 18, s. 48). Moreover, this was the case, whatever be the subject-matter of the insurance. The plaintiff might be a London buyer; the goods might have been bought in the interior of India from native growers, carried to the coast in native conveyances, and placed on an ocean steamer. Even though the buyer did not know all the persons who had dealings with the goods and might have found it difficult to ascertain, he had to find out and obtain their documents. This might take many months. Moreover, at the present day, Lloyds' underwriters might be better equipped, yet the burden, the hardship and the initial expense was upon the plaintiff (p. 19, s. 49).

6. *The Power of the Order.*

The present form of the Order is No. 19, Appendix K, "Annual Practice, 1936" (at p. 1766), as prescribed and amended by R.S.C. (No. 1), 1925, in order to include an order for *all* material documents in whosesoever's possession they may be: *Teneria Moderna, etc., Case* [1924] 1 K.B. 79.

The order relates to "the plaintiff and all persons interested in these proceedings and in the insurance."

They must produce and show "upon oath all insurance slips, policies, letters of instruction . . . or relating to the insurance or the subject-matter of the insurance on the ship, or the cargo on board thereof, or the freight thereby . . ."

Then follows the clause relating to documents on the loss of the ship: "and also all documents relating to the sailing or alleged loss of the said ship, the cargo on board thereof, and the freight thereby." Correspondence relating to the insurance must also be produced.

Then, the history of the ship before and during the voyage: "Also all correspondence between the captain or agent of the vessel and any other person, with the owner or any person or persons previous to the commencement of or during the voyage upon which the alleged loss happened."

After this, all the documents "in any way relating or referring to the matters in question in this action," including "all protests, surveys, log-books, charter-parties, tradesmen's bills for repairs . . . letters, invoices, . . . bills of lading . . . accounts . . . bills of exchange, receipts, vouchers, books, documents, powers of attorney, correspondence and writings (whether originals, duplicates or copies respectively)."

Nor does it matter whether the documents are in the plaintiff's "custody, possession, or power" or in that of "any other person."

The defendant may take copies or extracts.

The plaintiff "and the said other persons interested as aforesaid" must further account for all such documents as once were, but are no longer, in their possession, custody and power.

Finally,

"in the meantime all further proceedings be stayed."

Is there anything that this order omits? What material for a novel of the sea! Is it difficult to appreciate the strictures of Greer, L.J., when such an order is simply used to delay a claim to which there is no real answer?

(*To be continued.*)

Company Law and Practice.

Dealings with Equitable Interests in Shares whose Transfer is Restricted.

The articles of association of a private company must restrict the right to transfer its shares (Companies Act, 1929, s. 26 (1) (*a*)): sometimes it is thought sufficient to effect this by simply giving the directors an absolute and uncontrolled discretion to refuse to register any transfer, and such a provision would appear to satisfy the statutory requirement, for s. 26 does not lay down any rules as to the nature of the required restriction. But it is, of course, very common for the articles of a private company to impose restrictions on transfer of a much more defined and stringent character. The usual provisions prohibit the transfer of shares except in the following circumstances: First, a member who wishes to sell his shares must first offer them for sale to the other members of the company, and the articles will provide the machinery for the making and accepting of such an offer and for the fixing of the price; if the existing members do not take up all the shares, then the intending vendor is usually at liberty to sell and transfer them without any restriction other than that created by a provision giving the directors a discretion to refuse to register a transfer. Secondly, a member is commonly empowered to transfer or bequeath his shares to relatives falling within the class defined by the articles; and in the case of a bequest the personal representatives are authorised to transfer the shares to the legatee. Finally, provision is sometimes made to enable trusts of the shares to be declared by deed or will in favour of relatives of shareholders and to empower the necessary transfers to be made to the trustees or upon any change or appointment of new trustees.

These restrictions on transfer affect the transfer of the shares themselves and do not operate to prevent or restrict the creation of equitable interests in the shares or dealings with those equitable interests when created; nor, indeed, is the company in the normal case aware of or concerned with the existence or fate of such equitable interests, for s. 101 of the 1929 Act prohibits the entry of notice of any trust on the register, and very often articles of association supplement this statutory provision by exempting the company from the obligation of recognising equitable claims to or interests in shares. Of course, where the articles contain such a provision as I have mentioned for the creation of trusts of the shares in favour of relatives of the shareholder, the company will, before registering the transfer to the trustees, require to be satisfied that the beneficiaries do come within the relevant definition of "relatives"; but once the trust has been constituted and the trustees are registered as holders of the shares, the company will not usually know of or be interested in the dealings by way of assignment, or, it may be, charge, by the beneficiaries with their respective interests; nor in any case would such dealings affect the position of the trustees, *vis-a-vis* the company, as registered shareholders.

It would seem, therefore, that although provisions restricting the transfer of shares will operate to prevent or restrict persons who are neither existing shareholders nor relatives of an existing shareholder from becoming the legal owners of the shares, they will not limit the class of persons who may acquire equitable interests in those shares. For example, a registered shareholder might declare himself a trustee of his shares for X, Y and Z; now in the case of a company with articles such as those I have mentioned, X, Y and Z could not have the shares transferred to them and procure registration as the holders of the shares, except in accordance with the provisions of the articles. They would not, singly as such beneficiaries, have any legal relationship with the company; but as against the trustee shareholder they would be entitled to receive the dividends paid to him, and to require his voting power to be exercised in accordance with their directions. Further, they could assign their equitable interests and substitute other beneficiaries for themselves. So that in this way there might be any number of persons beneficially interested in shares in a private company, although none of them could, in view of the provisions of its articles, become a registered shareholder himself.

The same result could, I suppose, be arrived at in another way. A shareholder, acting in accordance with a clause in the articles, transfers his shares to trustees of a settlement which he has made in favour of members of his family; and the trustees are registered by the company as the holders of the shares. If the settlement contained a power of revocation the settlor could revoke the trusts and declare trusts in favour of persons who are not members of his family. Alternatively, the trustees, being now registered shareholders, would, under the articles, be entitled to have transfers of other shares made to them; so that the settlor could transfer other shares which he holds in the company, or indeed any shareholder could transfer his shares, to the trustees to be held by them upon trust for persons who are not members of the company, and who are satisfied to purchase an equitable interest in its shares. The directors under a general power to refuse to register transfers could refuse registration of such subsequent transfers, but I do not see why the company need have notice of the trusts. The disadvantage of the latter method would be, in the ordinary case, that further shares could not be transferred to the trustees without an offer to sell them being made to the shareholders generally.

It seems to me, therefore, that in one way or another the creation of and subsequent dealings with equitable interests in shares permit of an infringement of the spirit, if not the letter, of articles which restrict the transfer of shares save to a specified class of persons. Nor do I see how a company

which, as I have said, is not concerned with such equitable interests can, even if it so wishes, provide against such a result; but the practical answer may be that the company is not prejudiced and not concerned to prevent such dealings, though I can conceive that in a particular case it might not be desired to permit any voting rights to be exercisable by a certain person, A, who might nevertheless indirectly exercise them by requiring his trustee, who is registered in respect of shares in which A acquires the equitable interest, to vote according to his directions.

Restrictions on the transfer of shares may have the effect not only of limiting the class of persons to whom they can be sold, but also of hampering the creation of a mortgage of those shares. For the shares cannot be transferred to the mortgagee as security except in the manner prescribed by and subject to the provisions of the articles relating to transfer, which may very well mean that in a particular case they can never be transferred to the mortgagee at all; and consequently he is not in a position to exercise his power of sale since he is not the registered shareholder. Nevertheless, he could be put in the position of being able to sell (though only, of course, in accordance with the provisions of the articles as to first offering the shares to existing shareholders and otherwise) if, when he advances his money, he requires the mortgagor, in addition to executing a charge and depositing the share certificates, to give him such documents as are necessary to enable him, when his power of sale arises, to make the offer of the shares to the existing members, which is, as we have seen, the usual preliminary to any sale by the holder of shares in a private company. For example, a common form of article requires a member who wishes to sell to give the secretary of the company a notice of sale, and when that notice is given it sets in motion the whole machinery whose operations will result in a sale of the shares—either to members of the company or, if no member wants the shares, then to outsiders; so that if a mortgagee takes from the mortgagor a letter in blank to the secretary of the company constituting a notice of sale of the mortgaged shares, then when the power of sale becomes exercisable the mortgagee can complete the letter and so ultimately effect a sale of the shares. Such a letter takes the place, so to speak, of the blank transfer which is usually given to a mortgagee of shares, but which is of little use to him if his security consists of shares in a private company, the articles of which restrict their transfer with some stringency. Alternatively, the mortgagee, instead of taking such a letter, could take a power of attorney from the mortgagor to write the necessary letter in his name and on his behalf: see *Hunter* v. *Hunter* [1936] A.C. 222, at p. 248, per Viscount Hailsham, L.C.

It was the reading of the report of the case I have just mentioned which led me to a consideration of the subject of this article—namely, the creation and assignment of equitable interests in shares whose transfer is substantially restricted and the mortgaging of such shares. The facts of the case are rather complicated, and the decision went partly on grounds which do not strictly concern the company lawyer as such; and I hope that the following attempt to simplify the facts and to confine the points at issue to those which fall within the scope of "company law and practice" has not resulted in any material inaccuracies. By the articles of the company a member could not transfer his shares until he had given notice to the secretary offering to sell the shares at a price to be fixed by the auditor and until the secretary had offered them to the other members, one director, X, having a right of pre-emption. S, a shareholder in the company, deposited his share certificates with the bank and executed a memorandum charging the shares and containing a power of sale on any default being made by the mortgagor. Under pressure by the bank he executed instruments purporting to be transfers of the shares to nominees of the bank, and, in contravention of the articles, those nominees were registered as shareholders. The bank then purported to exercise their power of sale, and their nominees, in accordance with the articles, applied to the auditor to fix a price and then gave a notice of sale to the secretary of the company. X, purporting to exercise his right of pre-emption, offered to buy the shares at the price fixed, and a transfer of the shares was made by the bank's nominees to him. X, in his turn, purported to transfer the shares to the nominees of the bank as security for a loan.

It was held by Bennett, J., the Court of Appeal and three of the learned law lords, that the steps taken to put the nominees of the bank on the register of shareholders were not in accordance with the terms of the articles; consequently the shares had never been validly transferred by S, and S was entitled to have his name restored to the register of members. The articles provided the only means by which a member could form an agreement for the sale of his shares and they did not permit a shareholder to make a transfer of shares by way of security. The Court of Appeal had held that the purported sale by the bank operated as a valid transfer of the *equitable* interest in the shares, but the decision on this point was overruled by the House of Lords, who held that the bank could not, as mortgagee of the shares, split up the interest of the mortgagor and sell his beneficial interest while retaining the legal title. This, however, does not, I think, affect in any way what I have been saying about the possibility of selling, mortgaging or otherwise dealing with equitable interests in shares the transfer of which is restricted; for the restrictions on transfer apply to transactions affecting not equitable interests in the shares but the shares themselves.

A Conveyancer's Diary.

[Contributed.]

The Prescription Act, 1832. Disabilities.

By s. 7 of the Prescription Act, 1832, it is enacted: "Provided also, That the time during which any person otherwise capable of resisting any claim to any of the matters before mentioned shall have been or shall be an infant, idiot, *non compos mentis*, feme covert, or tenant for life . . . shall be excluded in the computation of the periods hereinbefore mentioned except only in cases where the right or claim is hereby declared to be absolute and indefeasible." Most of us, I think, tend to suppose that the effect of this section is to prevent time under the statute from running whenever the servient owner is an infant, life-tenant, married woman, or person of unsound mind. Unfortunately, this loose and comforting view is very far from being correct to-day. As we shall see, s. 7 seems very rarely to operate at all under the modern law of property.

There are a few preliminary points which it will be as well to clear up first. To begin with, it is most important to note that there are excepted out of the section all cases where the "right or claim is hereby declared absolute and indefeasible." In effect, this provision means that s. 7 only applies to the twenty-year period for easements other than that of light and the thirty-year period for *profits à prendre*. It does not touch the forty-year period for any easement, the twenty-year period for the easement of light, or the sixty-year period for *profits à prendre*.

In the second place, we must remember that there is quite astonishingly little direct authority upon the interpretation of the section. "Carson" (3rd. ed.) only refers to *Hulley* v. *Silversprings Bleaching Co., Ltd.* [1922] 2 Ch. 268, *Roberts* v. *James*, 89 L.T. 282, and three or four old cases that mostly turn upon points of pleading under the law in force before the Judicature Act. The same is true of "Gale" (11th ed.), except that *Hulley's Case* does not seem to be referred to at all in connection with s. 7.

Turning now to the substantial question, how far this section applies at the present day, we are fortunate enough

to have a clear statement of Eve, J., in *Hulley's Case* (p. 279) of what the section is meant to effect: "It was, of course, intended to preserve the rights—to the extent therein mentioned—of persons incapable of making the grant on the presumption of which the whole structure of statutory prescription is founded or of suing to prevent an invasion of their rights and property." Thus there are two questions which we must constantly bear in mind in considering whether the section applies: was there anyone capable of making a grant, and was there anyone capable of suing the person who claims the right?

Further, much the more important of these two points is the latter, and it is the only one appearing on the face of the section: "the time during which any person *otherwise capable of resisting any claim* to any of the matters before mentioned shall have been or shall be" under a disability is not to count. That conforms with the general tendency of English law, whose emphasis is mainly on remedies rather than on rights. Moreover, we must not forget that the whole point of the property legislation of 1925 is to ensure that in fact there is *always* someone capable of making a grant at any time after 1925.

We must next consider what sorts of action are in contemplation. There would seem only to be two such, namely, first, trespass *quare clausum fregit*, where the alleged right consists in the dominant owner entering upon the servient tenement or putting or keeping some object there, and second, nuisance, where the interference does not involve direct physical intervention upon the servient tenement. The first class covers all claims of a right of way, or to dump rubbish, or to do such things as allowing the bowsprits of ships to project over a wharf. This class also would include all claims to *profits à prendre*. The typical example of the second class is a claim to pollute a stream. Cases dealing with the easement of light also come under the heading of nuisance, but the easement of light is not within s. 7.

Now, neither trespass nor nuisance can be brought save by a person having possession. They cannot be brought by a person having a bare legal estate, nor by a mere occupier, nor by someone merely entitled to a beneficial interest. The meaning of "possession" is one of the most vexed questions in our law, and has been the playground of the learned. That being so, it is extremely hazardous to suggest a general definition of the word, though it is not usually very difficult to decide in practice whether a given person has or has not possession. Perhaps the following will serve as a rough and ready guide: a person is in possession of a tenement if he is in *de facto* occupation of it (whether physically or by receipt of the rents and profits), claiming right thereto, and intending to maintain himself there. Mere *de facto* occupation is not enough. Nor is a beneficial interest without occupation. The point, therefore, comes down to this: the section only prevents time running when some person is in possession so that he could successfully maintain trespass or nuisance in respect of the matter complained of but is under a disability within the words of the section. In the nature of things that cannot happen very often.

It will be desirable now to turn to the specific disabilities referred to in the section. In the first place it is clearly laid down in *Hulley's Case* that the provision in favour of a feme covert is now almost wholly ineffective. The section cannot be prayed in aid except where the married woman in question was married before 1883, which can practically never happen at the present distance of time. The judgment of Eve, J., is clear on the point: a woman married after the Married Women's Property Act, 1882, is a feme sole in respect of property rights: "She is no longer a feme covert, but is in fact discovert—not released from her marriage, but so far released from the former disabilities of coverture as to be made capable of resisting any claim to any of the easements in the Prescription Act mentioned" (p. 280).

Next there is the case of an infant, assuming that he is absolutely entitled to the servient tenement. Before the Law of Property Act, 1925, he was capable of being a legal tenant in fee simple. But even then it did not by any means follow that he was actually in possession. Since the Act it is even more difficult for him to be in possession; for, by s. 1 (6), he is incapable of holding any legal estate in land. In fact he may quite well be in possession, as, for instance, where the son of a farmer carries on the farm from his father's death despite his own infancy. But in the nature of things such a case is not very frequent, and only arises where the infant is in fact fairly old. *Primâ facie* the trustees as owners of the estate in fee are the people in possession, whoever may be occupier. They may be in possession as being in receipt of the rent of a tenant; or they may have let the infant go into occupation, as where the court has sanctioned a scheme whereby the house is kept up by the trustees as a home for the infant owner. In all these cases it will not be exactly easy to show that the infant is actually in possession and so in a position to maintain trespass or nuisance, and that the trustees are not. And without such possession the statute confers no protection. Moreover it must be remembered that since the trustees are statutory owners under the Settled Land Act they are in a position to make a grant, and so defeat the other point laid down by Eve, J., in the first passage quoted above from his judgment in *Hulley's Case*. On the other hand, it must not be forgotten that in so far as the period of infancy was before 1926 the old law applies, and it will be easier to gain the benefit of s. 7. Such cases may well occur for many years to come.

Similar considerations seem to apply to the tenant for life, assuming him to be a person of full age. The difference is that the tenant for life always had (and still has) possession and could maintain trespass or nuisance. But until the coming into force of the Settled Land Act, 1882, he was not in a position to make a grant in fee, and the grant presumed by the Prescription Act is a grant in fee. Of course it was always possible for the settlement expressly to confer such a power, but at the date of the Prescription Act such a power was not a regular incident of a life-tenancy. Since that Act it is a power appertaining to every tenant for life within the Act; for he can "sell . . . any easement over or in relation to the land" (S.L.A., 1882, s. 3 (1), S.L.A., 1925, s. 38 (1)). Applying the remarks of Eve, J., with respect to the feme covert, it seems reasonably clear that just as the modern married woman is not a "feme covert" in the sense that those words connoted in 1832, so the modern tenant for life, armed with the practically unlimited powers of the Settled Land Acts, and fortified since 1925 with the legal fee simple, is not the same puny creature as the "tenant for life" of 1832. If this contention be correct, no period of a life-tenancy since 1882 will prevent time running under the statute. It might be urged against this construction that it is somewhat odd that in over fifty years since the passing of the first Settled Land Act the point has so far escaped attention as not to have been the subject of a reported case; but it was almost forty years from the Married Women's Property Act, 1882, till *Hulley's Case*, and the point there decided had not previously been the subject of a reported case on the Prescription Act, though there had been a rather similar case on the Limitation Act, 1623. It is also true that the case of *Roberts* v. *James*, 89 L.T. 282, appears to be against this view. But the present point was not taken in that case, nor could it have been, as the case was tried in 1902, less than twenty years after the coming into force of the Settled Land Act, 1882. Moreover, in that case the alleged right was known to have been first exercised in 1869, before the Settled Land Act, 1882, but still long after the chain of continuous life estates began.

Considerations of space unfortunately do not permit us to enter fully into the rather more difficult case of the person of unsound mind. Suffice it to say that, unlike an infant, he can himself own the legal estate, and his receiver or committee

merely acts in his name under the L.P.A., s. 22, or, if he be a tenant for life, under the S.L.A., s. 28. Who is in possession and could maintain trespass or nuisance is a question that must largely depend on the particular circumstances of a given case, and in the light of such considerations it must be determined whether s. 7 of the Prescription Act does or does not apply. There do not appear to be any reported cases on this point.

Landlord and Tenant Notebook.

Rabbits.

It was announced a few months ago that the Government were contemplating, as a measure calculated to promote the interests of agriculture, the extermination of the rabbit. Naturally such a proposal gave rise to correspondence in *The Times*, and of the letters published some intrigued the keeper of this "Notebook." In one of them the writer, taking up the cudgels on behalf of the coney, alleged that the Ground Game Act had not led to a substantial decrease of rabbits, and argued that the sport they provided made the animal a very valuable medium, if properly exploited, for engendering good feeling between landlord and tenant.

The medium has not, of course, always been properly exploited and the Ground Game Act, 1880, has been misunderstood and amended. It is these aspects of the matter which concern readers of this paper.

By ss. 1 and 3 the Act referred to declares the right of the occupier of land concurrently with any other person who may be entitled to take and kill ground game (defined by s. 8 as hares and rabbits) and makes agreements to the contrary void. The use of the expressions "occupier" and "landowner" led to confusion and litigation, in the course of which judges on more than one occasion indulged in speculation as to the object of the Act, seeking to ascertain that object by reference to the whole statute in order to determine the meaning of a particular provision.

Thus, in *Morgan* v. *Jackson* [1895] 1 Q.B. 885, the plaintiff and the defendant were the tenant of a farm and a shooting tenant respectively, but the shooting rights had been granted by the plaintiff, not reserved and granted by the plaintiff's landlord. The defence (to a claim for sums due) that the agreement, under which the plaintiff had undertaken to use his influence and best endeavours to preserve all winged game, hares and rabbits, was void by virtue of the statute, failed: for the court considered that all that was meant and effected was that the tenant could not surrender his rights to landlord. Whether he retained any rights himself, concurrently with the defendant, was doubted.

Another problem had to be tackled in *Anderson* v. *Vicary* [1899] 2 Q.B. 426; [1900] 2 Q.B. 287, C.A. Here the story commenced with the grant of a twenty-one year agricultural lease from H to W, under which sporting rights (game and rabbits) were reserved "subject to the Ground Game Act." In 1895 the plaintiff took a five years' grant of the shooting from H, subject to W's right to hunt rabbits. In 1898 the defendant bought the property from H, and then accepted a surrender of the residue of the twenty-one year term from the tenant W. He went into occupation himself, and proceeded to set traps for rabbits. The plaintiff sought an injunction, contending that the Ground Game Act did not touch owner-occupiers. A. L. Smith, L.J., alone agreed with his view, basing his dissenting judgment on the considerations that "landlord" was used in s. 5 (a saving section) in contradistinction to "occupier" and that the owner who occupied could look after himself. But the majority upheld the view taken by Wright, J., who considered the object and effect to be that there should be no land in the kingdom over which the occupier had not the right to take and kill hares and rabbits; Vaughan Williams, L.J., did not agree that the antagonistic rights of landlords and tenants were the only consideration before the Legislature, or that the meaning of the word "occupier" was restricted; Romer, L.J., came down rather more wholeheartedly on the side of the defendant, pointing out that the construction contended for would enlarge the rights of a shooting tenant if a tenant got into difficulties and absconded and the landlord resumed occupation.

Stanton v. *Brown* [1900] 1 Q.B. 671, a special case stated by justices after acquitting the respondent of poaching partridges, turned on the question of severability. The respondent was given permission to shoot by a tenant holding under a lease which reserved sporting rights (lessor and his friends). He was found shooting partridges by the landlord's brother, who charged him. The magistrates decided that the reservation was void. The Divisional Court considered it clearly severable and perfectly valid as regards winged game.

Another case in which the statute played a decisive part was *Sherrard* v. *Gascoigne* [1900] 2 Q.B. 279. In this a tenant sued his landlord for breach of an alleged collateral warranty. The statement of claim alleged that when the plaintiff was negotiating for the farm the defendant's agent represented that the defendant was devoted to shooting, and would compensate for any damage caused by rabbits if he left them unshot. The devotion may have cooled off, and or may have exceeded the devotee's skill; at all events, much damage was done by rabbits. But the provision designed to help tenants could, it was found, benefit landlords as well. Section 1 created a right; s. 3 made it inalienable by avoiding any agreement in consideration of any forbearance to the contrary. It was on such an agreement that the action was founded: and the statement of claim was accordingly struck out as disclosing no cause of action.

An uncertainty as to the right of the tenant to share his rights affecting moorlands (specially dealt with by the 1880 Statute) with others was put an end to by the Ground Game (Amendment) Act, 1906, which declares valid any agreement by which the tenant grants the landlord the right to kill hares and rabbits concurrently with him during a period (1st September–10th December) not excluded by the special provision in question.

Apart from the Ground Game Acts, the rabbit has been the means of illustrating the application of at least two principles of the law of contract (and in each case, incidentally, the principles of equity) to the relationship of landlord and tenant. A valid collateral warranty (of the type since given prominence by *De Lassalle* v. *Guildford* [1901] 2 K.B. 215, C.A.) as to keeping down rabbits was successfully sued upon before the legislation came into being in *Morgan* v. *Griffiths* (1871), L.R. 6 Ex. 70, the tenant having declined to sign the counterpart lease till the assurance was given. It was argued, of course, that here was an attempt to vary a written document by a verbal agreement; but the answer was that (if sought) specific performance would never have been decreed in the landlord's favour unless the missing clause had been inserted. Then, in *West* v. *Houghton* (1879), 4 C.P.D. 197, the plaintiff, a landlord, had obtained from the defendant, lessee of the sporting rights, a covenant to keep down and destroy rabbits on the estate, so that no appreciable damage may be done to the crops on the said estate. The plaintiff did not occupy any of the property himself. Rabbits got the upper hand and consumed crops of a tenant of the plaintiff. The claim was for £50, but only nominal damages were awarded. There would, as was pointed out, be no means by which the aggrieved tenant could get the £50 out of the plaintiff's pocket if it were paid. There was no contract and no trust. While an argument based on the principle that effect must be given to an instrument and that the covenant must not be treated as a nullity, was dealt with by pointing to a proviso for re-entry which enabled the landlord to determine the sporting lease on breach of the covenant. Lord Coleridge, L.J., also observed that an injunction could have been obtained—but this seems a little doubtful; would any court enjoin accurate shooting?

Our County Court Letter.

THE DISPOSAL OF BANKRUPT STOCK.

In the recent case of *Dunning* v. *Colman and Fox & Harrison*, at Walsall County Court, the claim was for £40 as damages for wrongful detention and conversion of 19,400 bricks. The plaintiff's case was that he had bought the bricks at a public auction for £18 6s., but was prevented from moving them by the first defendant. The latter contended that the bricks were his, or alternatively were in the hands of the Official Receiver, and should not have been sold by the auctioneer. In case this defence should succeed, the plaintiffs had therefore also sued the auctioneers, the second defendants. The bricks had been sold to the plaintiff for 19s. a thousand, but would have cost £2 7s. 6d. a thousand in the open market. The claim was therefore for the amount paid, and also £21 14s. for the loss of the bargain. The first defendant's case was that he was the building owner, and his agreement with the builders provided that, in the event of their bankruptcy, the bricks became the first defendant's property, whereby there had been no wrongful conversion. The plaintiff contended, however, that as soon as the builders filed their petition, the bricks passed to the Official Receiver, who was entitled to authorise the second defendants to sell. The evidence was that the Sheriff had previously instructed the second defendants to sell, under judgments obtained against the builders. Half an hour before the sale, however, a receiving order was made on the builders' own petition. The second defendants sold enough on one site to satisfy the Sheriff, but, without his further authority, they went to another site and sold the above bricks to the plaintiff. The second defendants' case was that they had been in fact authorised by the Official Receiver, and had paid the whole purchase price to the trustee in bankruptcy, so that the plaintiff's remedy was against the first defendant. There was a conflict of evidence with regard to a telephone conversation between the second defendants and the office of the Official Receiver, as neither he nor his assistant was available at the time. His Honour Judge Tebbs held that the building agreement did not effectively pass the property in the bricks to the building owner, the first defendant. On the making of the receiving order, the property in the bricks therefore passed to the Official Receiver. The weight of evidence supported the contention that the second defendant was authorised, by the Official Receiver's department, to sell the bricks. Judgment was given for the plaintiff against the first defendant for £40, and costs, and in favour of the second defendants against the plaintiff, with costs, the latter to be recoverable by the plaintiff against the first defendant.

CONTRACTS FOR ADVERTISEMENTS.

In the recent case of *General Publicity Services, Limited* v. *Durham*, at Westminster County Court, the claim was for £2 2s. as the price of a fruiterer's advertisement on the cover of a pamphlet for the Brimpton Grange Hotel. The affidavit of defence stated that the canvasser represented that the manager of the hotel, who was a customer of the defendant, desired tradesmen to assist the hotel by advertising in the pamphlet, and thus reduce its cost. The next day, however, the manager of the hotel telephoned that the canvasser was using his name without authority, and the defendant therefore cancelled the contract, on the ground that it was induced by misrepresentation. The plaintiffs could not call the canvasser as a witness, as he had left their employ, but their case was that, as the defendant had signed the contract, he was bound by it, and the onus was upon him to prove the alleged misrepresentation. His Honour Judge Dumas held, however, that a party was not bound by an alleged contract, if he was induced to sign it by lies. Judgment was given for the defendant, with costs on Scale B. Compare two cases noted under the above title in our issue of the 13th June, 1936 (80 Sol. J. 460).

Reviews.

Rights of Way. By Wm. Marshall Freeman, of the Middle Temple, Barrister-at-Law, Recorder of Stamford. Second Edition, 1936. Demy 8vo. pp. xix and (with Index) 115. London, Liverpool, Birmingham and Glasgow: The Solicitors' Law Stationery Society, Limited. 7s. 6d. net.

The second edition of this book exhibits several amplifications and improvements compared with its predecessor. That it is fully up to date is illustrated by reference to *Attorney-General* (*ex parte Weymouth Corporation*) v. *Bird*, a decision on the Rights of Way Act, 1932, reported in *The Times* as recently as 9th July. The last edition appeared before there had been any judicial interpretation of the Act aforesaid. In the present edition due note is taken of *Williams-Ellis* v. *Cobb* [1935] 1 K.B. 310; 79 Sol. J. 11, and *Merstham Manor Ltd.* v. *Coulsdon and Purley U.D.C.* (1936), 52 T.L.R. 516; 80 Sol. J. 615. There is a new chapter on Private Rights of Way, and the opening passages have been improved. The writer has contrived to give within a short compass—the text extends to some eighty-nine pages—a great deal of useful, well arranged information, interspersed with some references, which the practitioner will welcome, to larger works. Relevant excerpts from the Highway Act, 1835, and the Local Government Act, 1933, appear in the first two appendices, while a third treats, with suitable quotations from Acts and statutory regulations, of the extinguishment of rights of way under the Housing Acts, 1925–1935, and the Town and Country Planning Act, 1932.

Both Sides of the Dock. By Charles Kingston. 1936. Demy 8vo. pp. (with Index) 286. London: Andrew Melrose, Ltd. 16s. net.

Its title does not give a very precise idea of the contents of this book, for it has little to say about any aspect of the dock. Rather one might call it "The Trickster's Manual," since the greater part of it deals with the most varied and ingenious assortment of cheats that was ever gathered between two covers. Indeed, here are stories enough to fill several books, and half the number would have made a capital one. If all but the tricksters had been excluded so as to give the work homogeneity, and some of the less original tales had been weeded out, allowing the rest fuller and more careful treatment, this would have been a first-class collection. When he does not lapse into a superficial journalese or spoil a good story by a trite comment or a *cliché*, the author can write both wittily and attractively. I have rarely read anything more amusing than "The Complete Rogue," or "The Author of 20,000 Forgeries." For their sake alone, the book is worth buying.

Books Received.

The Journal of Comparative Legislation and International Law. Third Series. Vol. XVIII. Part III. August, 1936. London: Society of Comparative Legislation. Issued to subscribers only.

Private Companies: their utility and the exemptions they enjoy. By Herbert W. Jordan. Seventeenth Edition. 1936. Crown 8vo. pp. (with Index) 66. London: Jordan and Sons, Limited. 2s. net.

Palmer's Shareholders', Directors' and Voluntary Liquidators' Legal Companion. Thirty-fourth Edition, 1936. By Alfred F. Topham, Bencher of Lincoln's Inn, one of His Majesty's Counsel, and A. M. R. Topham, B.A., of Lincoln's Inn, Barrister-at-Law. Crown 8vo. pp. viii and (with Index) 300. London: Stevens & Sons, Ltd. 4s. net.

[All books acknowledged or reviewed can be obtained through The Solicitors' Law Stationery Society, Limited, London, Liverpool and Birmingham.]

To-day and Yesterday.

31 August.—On the 31st August, 1667, Pepys records in his diary: "I in the evening to White Hall to see how matters go, and there I met with Mr. Ball of the Excise-office and he tells me that the Seal is delivered to Sir Orlando Bridgeman; the man of the whole nation that is the best spoken of and will please most people; and therefore I am mighty glad of it." Unfortunately the learned Chief Justice of the Common Pleas made a very poor hand at Chancery work.

1 September.—On the 1st September, 1913, Lord Haldane, the Lord Chancellor, addressed the American Bar Association at Montreal on "Law and Ethics." Chief Justice White presided over an enthusiastic assembly and as one comment put it: "There are times when we get glimpses of larger possible unities and of achievements at present impracticable. One of those rare occasions seems to have come when the American Bar Association meets on Canadian soil and a Lord Chancellor of England is the spokesman of the highest aspirations of three countries."

2 September.—On the 2nd September, 1803, Byrne, one of the men involved in Robert Emmett's abortive Irish rising, was tried in Dublin for high treason, two soldiers having found him with a pike on his shoulder. He was found guilty. The insurrection had been a miserable failure, the rebels never being more than a disorderly rabble who were easily dispersed by the ordinary guard, though the mere alarm had thrown the Dublin Castle authorities into terror and despair.

3 September.—On the 3rd September, 1823, Hardinge Stanley Giffard was born at Pentonville. He became Lord Chancellor Halsbury.

4 September.—Sir John Fielding was one of the best known of the Bow Street magistrates. He was apparently blind from birth, but he is said to have known over three thousand thieves by their voices. One critic says that though "of no great reputation as to strict integrity he was generally esteemed a very useful member of society." Another accused him of making money by encouraging criminals and then detecting them. He was also said to be wicked enough to admit reporters, supplying them with pen and ink which cruelly exposed the criminals. He died at Brompton Place on the 4th September, 1780.

5 September.—Sir Richard Choke was lucky to be able to pursue a peaceful and uninterrupted judicial career during the disturbed times in which he lived, when the Wars of the Roses raged. He was appointed a Justice of the Common Pleas by Edward IV on the 5th September, 1461. Yet during the temporary restoration of Henry VI in 1470, and on the subsequent return of King Edward, he retained his place. The accession of the boy king, Edward V, saw him still a judge and soon afterwards he attended the coronation of Richard III, receiving seven yards of red cloth from the royal wardrobe for the occasion. He died during Richard's reign.

6 September.—On the 6th September, 1666, the Great Fire was raging in London and the Templars who on the previous day had checked the progress of the flames threatening their property found themselves again in danger. They and their servants, acting under the orders of the Duke of York, a bencher of the Inner Temple, who stayed all night personally superintending operations, succeeded by the free use of gunpowder in saving the greater part of their Inn and in particular the Temple Church which was nearly touched at the south-eastern corner.

The Week's Personality.

Few lives in the law have spanned such a period as Lord Halsbury's, whose days stretched back from Lord Birkenhead to Lord Eldon, from Lord Trevethin to Lord Tenterden. His upbringing had been unusual for he never went to school but he received from his father at home an education so complete that he could throughout his life read the Latin and Greek classics for pleasure. He also gained some knowledge of Hebrew. At Oxford where he took his degree, he rowed in his college eight, and after coming down he assisted his father in the work of editing a paper. In 1850, in his twenty-seventh year he was called to the Bar at the Inner Temple, embarking on that career which led him thrice to the Woolsack, where with short intervals he presided for the greater part of twenty years, and where he immediately proved himself to be *primus inter pares*. Extreme old age still found him active and vigorous, and it was only in 1916 that he delivered his last judgment in the House of Lords. Well might his successor, Lord Birkenhead, in conveying to him the profession's congratulations on the seventieth anniversary of his call to the Bar, apply to him Homer's tribute to Nestor: "Two generations of mortal men already had he seen perish that had been of old time born and nurtured with him in goodly Pylos, and he was King of the third."

Calling the Spirits.

In a King's Bench case towards the end of last term the dispute concerned the origin and authenticity of certain ancient Indian miniatures, a question so obscure that Greaves-Lord, J., suggested that the only way of getting at the truth was to call the spirits. "You may call them," said counsel, "but whether they will come is another matter." That recalls a certain murder case at Warwick when the defence, as a last resort, suggested that the crime had been committed by an apparition. Said the judge to the jury: "I think, gentlemen, you seem inclined to lay more strees upon an apparition than it will bear. I cannot say I give much credit to those kind of stories; but be that as it will, we have no right to follow our own private opinion here. We are now in a court of law, and must determine to it; and I know not of any law now in being which will admit the testimony of an apparition; nor yet if it did, doth the ghost appear to give evidence. Crier, call the ghost." The crier called thrice, but to no purpose.

An Untoward Incident.

Whatever the outcome of the revolver incident on Constitution Hill, we may be certain that it will not give rise to so quaint a correspondence as that which passed between Queen Victoria and Mr. Gladstone as a result of a somewhat similar alarm in 1872, when an Irish youth presented an unloaded pistol at her near Buckingham Palace. On the morrow, she wrote to the Prime Minister, pointing out that "tho' this poor wretch did not mean to *kill* he meant to *frighten*, and this may be tried again and again and end badly some day," so that too great leniency "would *not* do." Unfortunately, the case came before that mildest of judges, Baron Cleasby, who adjudged that a year in prison and twenty strokes of the birch would meet the demands of justice. The Queen wrote again expressing surprise and annoyance at this "extreme leniency." "The fright caused by the attempt, the Queen felt for *long afterwards* and it *might* have been a *worse* effect, for fright is often *very dangerous* . . . The Queen does demand from the Government that protection which as a Queen and as a Woman she feels she has a *right to expect*." Mr. Gladstone had to write a very tactful letter regretting the learned judge's "vagaries."

Mr. Harry Barber, solicitor, of Queen Victoria-street, E.C., and of Bromley, Kent, chairman of the London Congregational Union in 1913, and chairman of the Hankow Light and Power Company, left estate of the gross value of £17,665, with net personalty £17,229. He left £100 to the London Congregational Union.

Notes of Cases.

House of Lords.

Duncan *v.* County Council of County of Aberdeen.

Lord Blanesburgh, Lord Atkin, Lord Thankerton, Lord Macmillan and Lord Maugham. 2nd July, 1936.

Local Government—Poor Law—Disability Pension—First Pound of—Whether to be Disregarded in Deciding whether Applicant a Poor Person or only in Calculating Amount of Relief—Poor Law (Scotland) Act, 1934 (24 & 25 Geo. 5, c. 52), s. 11.

Appeal from an interlocutor of the First Division of the Court of Session in Scotland, dated 13th February, 1936, reversing a decision of the Sheriff-Substitute, dated 28th November, 1935.

The appellant was a cabinet maker by trade, disabled, and unable to follow his occupation, as a result of wounds received in the Great War. The respondent county council were the local authority for public assistance, responsible for the relief of the poor within the county. The appellant had a wife and five children, all at school. His only income was a 100 per cent. wounds and disability pension of £2 a week, granted to him in 1921. In March, 1935, a few days after s. 11 of the Poor Law (Scotland) Act, 1934, had been brought into effect, the appellant, unable adequately to maintain seven persons on his resources, applied to the public assistance committee of the respondents for relief. The committee refused the application, and, believing that they were bound to do so, regarded the appellant as being effectively in receipt of his full pension of £2 a week. The appellant accordingly brought an action claiming a declaration that he was a poor person within the meaning of the Poor Law (Scotland) Act, 1845, and asking the court to ordain the respondents to afford him such relief as he might be legally entitled to for himself and his dependents. He contended that under the Act of 1934 the respondents were bound to disregard the first £1 of his disability pension of £2 a week in determining whether he was a poor person and in determining the amount of relief to be granted to him. Section 11 (1) of the Act of 1934 provided: "In affording outdoor relief to any person a local authority shall disregard . . . (*d*) the first £1 of any wound or disability pension of which he . . . is in receipt." The Sheriff-Substitute held that the first £1 of the appellant's pension must be disregarded. The Court of Session (Lord Moncrieff dissenting) reversed that decision.

Lord Blanesburgh said that the Lord President had described the question raised as at once difficult and important. So it was. The appellant's case before the Sheriff was that the respondents were by the new Act bound to disregard £1 of his pension as much when determining whether he was a poor person as in determining the amount of relief to be granted to him. The respondents replied that the sub-section only applied for the purpose of regulating the amount of outdoor relief to be given to one who, apart from the section altogether, would be a person entitled to relief. They had, however, put it on record that, if they were bound to disregard the first £1, the appellant was entitled to relief. He (his lordship) agreed with the views about to be expressed by their lordships individually in judgments which he had been privileged to read. Section 11, as he saw it, was a remedial section intended specially to benefit a class of person entitled, in the view of the Legislature, to exceptional consideration. No construction of it was, he thought, tenable—if another were open—which would make the receipt of that, which, in the event, was by the section to be disregarded, itself a bar to the reception of an application for relief. Such, however, was the position to which the appellant here was relegated by the decision appealed from. He believed that the words "in affording" covered the whole procedure in outdoor relief, from the moment of application for it to the moment when it was disposed of, and, that the word "afford" might be so used in that Act was shown by reference to its use in s. 4. The implication after the word "in" of such words as "proceedings for affording" would express a result which, in his view, was already conveyed by the words as they stood. In his opinion the appeal should be allowed.

The other noble lords also gave judgment allowing the appeal.

Counsel: *James Stevenson*, K.C., and *J. C. M. Guy*, for the appellant; *W. D. Patrick*, K.C., and *H. A. Shewan*, for the respondents.

Solicitors: *Nicholson, Freeland & Shepherd*, agents for *Strathern & Blair*, W.S., Edinburgh; *R. C. Bartlett & Co.*; *Bryson Sons & Davie*, S.S.C.

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

Lindsey County Council *v.* Marshall.

The Lord Chancellor, Lord Sankey, Lord Russell of Killowen, Lord Macmillan and Lord Wright, M.R. 14th July, 1936.

Negligence—Nursing Home managed by Local Authority through Medical Officers its Agents—Puerperal Fever contracted by Patient in Hospital—Failure of Agents to warn New Patients—Liability of Local Authority.

Appeal from an order of the Court of Appeal, dated the 8th February, 1935 [1935] 1 K.B. 516, affirming a judgment of Lawrence, J., dated the 4th June, 1934.

The appellant council, the defendants in the action, were the authority empowered to provide the Cleethorpes Maternity Home under the Maternity and Child Welfare Act, 1918. The plaintiff, the present respondent, in January, 1933, arranged with the matron of the home that she should have a private ward at 4 guineas a week, and be attended by her own doctor, for her confinement which was expected to take place on or about the 4th July. On the 12th July, the confinement being imminent, the plaintiff arrived at the home and found it full. She agreed to go to a ward containing two other patients. She was delivered the next day, and a few days later was found to be suffering from puerperal fever. A Mrs. Franklin had developed puerperal fever at the hospital at the beginning of July; the diagnosis took place at a neighbouring hospital to which the patient had been sent, and was reported to the matron of the home, the medical superintendent, a Dr. Stott, and the medical officer of health for the county, a Dr. Campbell, on the 5th July. The plaintiff having sued the defendants in respect of her illness, the action was tried by Lawrence, J., with a special jury, who found that it was a breach of duty by the defendants (*a*) not to refuse admission to the home to new patients from the 5th July on; (*b*) not to have taken swabs from the whole of the staff from the 4th to the 20th July; (*c*) not to inform the plaintiff of Mrs. Franklin's case; and that the plaintiff's illness flowed from the breach. They awarded her £750 damages. The Court of Appeal (Maugham, L.J., dissenting) affirmed the judgment.

The Lord Chancellor said that he was of opinion that there was ample evidence to support the conclusions of fact. It was, however, contended for the appellants that, even if there was negligence in continuing to admit new patients, and in not informing them of the facts, the responsibility rested on Dr. Campbell and Dr. Stott, and that the appellants were not liable in law. He was unable to accept that view of the law. The appellants were carrying on a maternity home, and they were inviting prospective mothers to make use of it for the purpose of their confinements. In those circumstances, they owed a duty to those whom they invited into the premises to make those premises reasonably safe, or if there was any hidden danger of which they or their agents were or ought to have been aware, to give the persons so invited due warning of its existence. The appellants looked to

Dr. Campbell and Dr. Stott to advise them on medical questions. But the duty was laid by law on the appellants, and they were responsible in law for the mistakes of their agents. He could see no difference in principle between the employment of a doctor to advise on medical questions and the employment of any other skilled person to advise on other questions. The appellants relied on a series of cases in English and Scottish Courts in which it had been decided that, where a public authority carried on a hospital, that authority were not responsible to patients for mistakes in medical treatment or in nursing, provided that they had taken reasonable care to appoint competent doctors and nurses. That principle could have no application to the facts of this case. The appellants were not providing any medical attendance for the respondent, and there was no complaint that the nurses were guilty of any lack of skill or care in attending her. In his opinion, there was nothing in the principle of the cases on which reliance was placed to absolve the appellants from their responsibility for their breach of duty. There was no trace of authority for the view that, where a corporation acted by an agent, their liability for the mistakes of that agent was any less where the agent was a medical man than where the agent belonged to any other profession or calling. It followed that the appeal failed.

The other noble Lords also gave judgments dismissing the appeal.

COUNSEL: *Cave*, K.C., and *Walker Carter*, for the appellants; *N. Winning* and *G. Smallwood*, for the respondent.

SOLICITORS: *Taylor, Jelf and Co.*, agents for *Eric W. Scorer*, Lincoln; *Maude and Tunnicliffe*, agents for *James Young*, Grimsby.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Sim *v.* Stretch.

Lord Atkin, Lord Russell of Killowen and Lord Macmillan.
22nd July, 1936.

LIBEL—TELEGRAM—CAPACITY OF WORDS TO BEAR DEFAMATORY MEANING—OBSERVATIONS.

Appeal by the defendant from an order of the Court of Appeal (Greer and Lord Roche, L.JJ., Slesser, L.J., dissenting), dated the 6th June, 1935, dismissing his appeal from a verdict and judgment for £250 damages for alleged libel entered against him in an action tried by Talbot, J., and a common jury.

The action was brought by the respondent Stretch for damages for the enticement of his (Stretch's) servant, and for alleged libel contained in the following telegram sent by Sim to Stretch in 1934: "Edith has resumed her service with us to-day. Please send her possessions and the money you borrowed, also her wages, to Old Barton.—Sim." The plaintiff alleged that by those words Sim meant that he (Stretch) was in pecuniary difficulties and compelled to borrow, and that he had in fact borrowed money from the housemaid, that he had failed to pay her wages, and that he was a person to whom no one ought to give credit. The jury returned a verdict for Stretch for £25 in respect of the enticement and £250 in respect of the alleged libel. The present appeal and that to the Court of Appeal were against the latter verdict only.

LORD ATKIN said that the question was whether the words in their ordinary signification were capable of being defamatory. Judges and text-book writers alike had found difficulty in defining with precision the word "defamatory." The conventional phrase about exposing the plaintiff to hatred, ridicule and contempt was probably too narrow. The question was complicated by having to consider the person, or class of persons, whose reaction to the publication was the test of the wrongful character of the words used. He (Lord Atkin) did not intend to ask their lordships to lay down a formal definition, but after collating the opinions of many authorities he proposed in the present case the test: would the words tend to lower the plaintiff in the estimation of right-thinking members of society generally? In the present case it was material to notice that there was no evidence that the words were published to anyone who had any knowledge at all of any of the facts. It might, however, be inferred that the publication of the telegram at Cookham Dean, where both parties lived, was to someone who knew the plaintiff. What would he or she learn by reading the telegram? It was said by the judge at the trial, and accepted by the two members of the Court of Appeal who affirmed the judgment, that the words were capable of conveying to anybody that the plaintiff had acted in a mean way in borrowing money from his own maid and not paying her as he was required to, and required to by telegram, and also in withholding her wages. With the greatest respect, that was imputing to the words a suggestion of meanness both in borrowing and in not repaying which he (Lord Atkin) found it impossible to extract from their ordinary meaning. He was at a loss to understand why a person's character should be lowered in anyone's estimation if he or she had borrowed from a domestic servant. Of course, there might be special circumstances, and so large an amount might be borrowed or left so long unpaid that the facts when known would reflect on the character of the master. But to make an imputation which was based on the existence of facts unknown and not to be inferred from the words attacked was surely exactly to come under the ban of Lord Esher cited in *Nevill* v. *Fine Art and General Insurance Co.* [1897] A.C. 68, at p. 73: "It seems to me unreasonable that, when there are a number of good interpretations, the only bad one should be seized upon to give a defamatory sense to the document." He did not find much value in other cases where words were held to be incapable of being defamatory, and he only cited *Clay* v. *Roberts* (1863), 8 L.T. 397, because of its reference to social conditions seventy years ago. In the present case he found himself in complete agreement with the judgment of Slesser, L.J. Being of opinion with him that the words complained of were incapable of a defamatory meaning, he was of opinion that the appeal should be allowed.

COUNSEL: *G. O. Slade* and *Neville Faulks* for the appellant; *Eddy*, K.C., and *F. H. Lawton*, for the respondent.

SOLICITORS: *Bower, Cotton and Bower*, agents for *T. W. Stuchbery and Son*, Maidenhead; *Mr. H. Pinder Brown*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Court of Appeal.

F. W. Woolworth & Co. Ltd. *v.* Lambert.

Lord Wright, M.R., Romer and Greene, L.JJ.
27th, 28th and 29th July, 1936.

LANDLORD AND TENANT—IMPROVEMENTS AND ALTERATIONS—LANDLORD'S CONSENT WITHHELD—WHETHER JUSTIFIED—LANDLORD AND TENANT ACT, 1927 (17 & 18 Geo. 5. c. 36), s. 19 (2).

Appeal from a decision of Clauson, J. (80 SOL. J. 186).

The plaintiffs held a lease of shop premises for a term of forty-five years from 1931, at a rent rising to £3,750. They covenanted "not without the previous consent in writing of the lessors to erect or suffer to be erected upon the said demised premises nor to make or suffer to be made any structural alterations in or additions to the demised premises." It was provided that if alterations were made with the consent of the lessors, no fine, premium or increase of rent would be demanded for their approval. The plaintiffs, having acquired a tenancy of land at the back belonging to different landlords, proposed to pull down the back wall and the rear part of the side wall and to build so that there stood on the combined property one large shop, the staircase and staff accommodation being removed from the original shop to the other premises. They undertook to reinstate the premises at the end or sooner determination of the term. In May, 1935, the landlords

refused their consent except on payment of £7,000. Clauson, J., held that the proposed alterations were not "improvements" within s. 19 (2) of the Landlord and Tenant Act, 1927, and that, therefore, the court could not say that the landlords were not entitled to withhold their consent. The tenants appealed.

LORD WRIGHT, M.R., dismissing the appeal, said that to decide whether the landlords had unreasonably refused consent it was necessary to decide whether the sum they claimed was a reasonable sum representing the diminution in value of the premises as a result of the alterations. The evidence did not show whether or not this was a reasonable sum and the plaintiffs had not, therefore, discharged the onus of showing that the consent had been unreasonably withheld. His lordship, however, considered that the proposed alterations were improvements. They would not have prevented the demised premises being used as a shop, though it formed part of other premises not part of the demised premises. The pulling down of the wall did not constitute destruction of the demised premises.

ROMER, L.J., agreed.

GREENE, L.J., agreed in dismissing the appeal, but considered that the proposed alterations were not "improvements" within the Act. The test was not what was beneficial to the tenants' business, but what was an improvement to the demised premises—not an improvement to some composite building.

COUNSEL: *Morton*, K.C., and *S. P. J. Merlin* (*Sir William Jowitt*, K.C., with them); *Radcliffe*, K.C., and *R. W. Turnbull*.

SOLICITORS: *Lovell, White & King*; *Robins, Hay & Waters*, agents for *Lacey & Son*, of Bournemouth.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Appeals from County Courts.

Pick *v.* Paling.

Slesser, L.J., MacKinnon and Goddard, JJ. 14th July, 1936.

WORKMEN'S COMPENSATION—ACCIDENT—INJURY—WEEKLY PAYMENTS OF FULL COMPENSATION—SUBSEQUENT EMPLOYMENT IN LIGHT WORK—REDUCED PAYMENTS—APPLICATION TO REDEEM WEEKLY PAYMENTS—BASIS OF REDEMPTION.

Appeal from Peterborough County Court.

In September, 1931, an engine driver and labourer employed by a farmer was injured while working in the engine house grinding wheat, the first and second fingers of his right hand being cut off just below the knuckles, and the remaining fingers being bent into the palm and fixed there. His average weekly earnings had been £2 1s. 6d., and he was paid 22s. 10d. a week compensation on the basis of total incapacity. In March, 1933, he was offered light work at 2s. 6d. a day, his compensation being then reduced to 14s. 7d. a week. At an arbitration on the 31st October, 1933, an agreed award was drawn up under which the employer agreed to pay the workman 14s. 7d. a week compensation and to employ him at suitable work for a minimum period of eight months of the year at a minimum wage of 2s. 6d. per day, it being provided that should fainting or dizziness become chronic to such an extent as to render the workman unable to do the work provided, this should be deemed a "change of circumstances" within the Workmen's Compensation Act. The employer in fact provided the light work agreed all the year round. In January, 1936, the employer applied for an arbitration in respect of the redemption of the weekly payments, the application stating that the date of the agreement was an award of the 31st October, 1933, fixing a weekly payment of 14s. 7d. and that it continued. The workman in answer pleaded that the compensation paid from the date of the accident till March, 1933 was 22s. 10d. a week, and that the agreement contained an obligation to pay a minimum wage of 2s. 6d. a day. He also contended that there had been a "change of circumstances" within the Act giving him a right to apply to have the compensation re-assessed, alleging that further contraction of his hand had taken place, and that owing to the injury he was unable to obtain work other than that provided on compassionate grounds by the employer. The learned county court judge dismissed the application to redeem, and also held that no change of circumstances had occurred, dismissing the counter-application also.

SLESSER, L.J., dismissing the employer's appeal, said that the workman was receiving compensation partly in payment of compensation and partly by means of special work. The agreement was not permanent, because there might be a "change of circumstances" in connection with the work giving the workman a right to review. Whatever else was the weekly payment, it was not 14s. 7d. (see *Clawley* v. *Carlton Main Colliery Co.* [1918] A.C. 744). At the hearing, the employer asked for redemption on the basis of 14s. 7d., and no other figure. It had now been argued that even if the judge came to the conclusion that the application failed, it remained for him to ascertain the true weekly payment on which the redemption should be based. In the circumstances, there was no such obligation. In other cases different considerations might arise, but here the employer based his case only on a figure on which he was not entitled to redeem and the burden of satisfying the section was on him. Though he had a right of redemption at the proper weekly figure, there was no burden on the judge to travel outside the case the employer had limited. There was no application by the employer to review or fix the statutory compensation. The fact that the workman himself had asked for a review did not oblige the judge to travel outside the employer's case. He had never applied in terms for a review, but only made a counter-application.

MACKINNON and GODDARD, JJ., agreed.

COUNSEL: *Edgar Dale*; *Gerald Gardiner*.

SOLICITORS: *Field, Roscoe & Co.*, agents for *Sadler & Lemmon*, of King's Lynn; *Metcalfe, Copeman & Pettefar*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re Gatti's Voluntary Settlement; de Ville *v.* Gatti.

Farwell, J. 10th July, 1936.

TRUST—SETTLEMENT ON CHILDREN AND ISSUE—ONE DYING A BACHELOR AND INTESTATE—WHETHER ABSOLUTE GIFT TO HIM.

The settlor, who died in 1929, had in 1923 made a voluntary settlement of certain shares on his seven children and their issue. By cl. 2 the trustees were directed to stand possessed of the trust fund to divide the same into seven equal shares, and to appropriate one of such shares to each of the children. By cl. 3 the shares were not to vest absolutely "but shall be retained by the trustees and held upon the trusts hereinafter declared concerning the same respectively." By cl. 4 the trustees were to hold the share of each of the children in trust to pay the income to such child during his or her life, with a provision determining such interest in case of bankruptcy or alienation. By cl. 5 after the death of any life tenant, the trustees were to hold his share in trust for his children as he should by deed or will appoint, and in default of appointment, in trust for such children equally at twenty-one or marriage. By cl. 7 the trustees might at their discretion during the life of any life tenant either in contemplation of or after his or her marriage, settle all or any part of "the trust fund hereinbefore given to such life tenant," upon such trusts as the trustees thought fit. By cl. 8, if any life tenant had no child to attain a vested interest, then the trustees were to hold his or her share in trust for such persons as the life tenant by will or codicil appointed. In 1936 one of the settlor's sons died a bachelor and intestate. The question arose whether the share appropriated to him now formed

part of his estate on failure of the gift over, or whether the share reverted to the estate of the settlor as being held on a resulting trust.

FARWELL, J., in giving judgment, said that to make room for the rule in *Lassence* v. *Tierney*, 1 Mac. & G. 551, it was essential to find in the first place an absolute gift to the person in question. If one found such an absolute gift, the fact that trusts were declared and that they provided that the share so given was not to be an absolute interest in the donee, but was to be retained by the trustees, was not in itself sufficient to oust the application of the rule. Here the settlor intended an absolute gift in the first instance. In cl. 7 he referred to the share of each child as "given" to him. This case came within *Lassence* v. *Tierney*, and the son's share passed to his estate. *In re Payne* [1927] 2 Ch. 1, did not apply.

COUNSEL: *Shebbeare*; *Watmough*; *R. Goff*.

SOLICITORS: *Gasquet*, *Metcalfe* & *Walton*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re Chartered Surveyors' Benevolent Fund (Incorporated).

Bennett, J. 27th July, 1936.

BENEVOLENT ASSOCIATION—AMALGAMATION—EXTENSION OF OBJECTS—RELIEF OF MEMBERS OF SOCIETY WITH WHICH AMALGAMATION PROPOSED—CONFIRMATION BY COURT—TERMS.

The confirmation of the court was sought in respect of a proposed change in the objects of the Chartered Surveyor's Benevolent Fund (Incorporated), so as to extend the powers of the Benevolent Association to enable gratuitous relief to be granted to necessitous persons who were members or ex-members of any society, association or institution with which the Chartered Surveyors' Institution or the association had amalgamated or might thereafter amalgamate, as well as to members or ex-members of the Chartered Surveyors' Institution. An amalgamation with the Scottish Estate Factors' Society was proposed.

BENNETT, J., confirmed the extension of the objects, the Association giving an undertaking only to amalgamate with the Scottish Estate Factors' Society on the terms that the funds of both societies were amalgamated, so that the members of that society should not be put upon the books of the association while its fund was kept for its purposes alone.

COUNSEL: *George Slade*.

SOLICITORS: *Beale* & *Co*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Woodhouse *v.* Commissioners of Inland Revenue.

Lawrence, J. 28th April, 1936.

REVENUE—SUPER-TAX AND SUR-TAX—ANNUITY PAYABLE TO TAXPAYER BY COMPANY—PART ONLY OF ANNUITY DRAWN—WHETHER TAXPAYER ASSESSABLE ON WHOLE AMOUNT DUE.

Case stated by the Commissioners for the Special Purposes of the Income Tax.

In the year 1928-29, the appellant, Woodhouse, formed a company of which he and his wife were the original directors. The main objects of the company were to acquire and deal in lands, shares, mortgages, etc. In July, 1928, the appellant sold to the company real and personal property for £157,756. In satisfaction of the purchase money the company gave the appellant an undertaking to pay him during his life weekly sums aggregating £7,887 15s. per annum. The value of the annuities was deemed to be £131,693. The company also gave the appellant an undertaking to issue a debenture for £26,063 carrying interest at 5 per cent. per annum. The annuity was payable irrespective of whether or not the company had income to meet it. In fact the company had assets ample to meet it. The whole of the annuity payable was not in fact paid to the appellant. For the years 1928-29, 1929-30, 1930-31, he received amounts far less than the annuity for which the company was liable. He stated in evidence that he did not call on the company to pay more because he did not require it. Assessments to super-tax and sur-tax for the three years in question were made on the appellant in respect of the full amount of the annuity due. On appeal to the special commissioners it was contended for the appellant that only the amounts actually received should be included in the computation of his income for the purposes of assessment to super-tax and sur-tax. Reliance was placed on his behalf on *Leigh* v. *Commissioners of Inland Revenue* [1928] 1 K.B. 73; *Lambe* v. *Commissioners of Inland Revenue* [1934] 1 K.B. 178; and *St. Lucia Usines & Estates Co., Ltd.* v. *St. Lucia* [1924] A.C. 508. It was contended for the Crown that the whole amount of the annuity due should be included in the computation of income. The commissioners were of opinion that the case differed in its facts from those of *Lambe* and *Leigh*, *supra*, because in those cases the taxpayer could not obtain payment from the respective debtors of the amounts due to him, and that the case was similar to *Commissioners of Inland Revenue* v. *Doncaster* (1924), 40 T.L.R. 433. They confirmed the assessments.

LAWRENCE, J., said that, in his opinion, the matter was governed by *Dewar* v. *Commissioners of Inland Revenue* [1935] 2 K.B. 351. Here the court was dealing with an annuity and not with commercial accounts. The commissioners had decided the case against the appellant taxpayer on the ground that he could have obtained payment of the annuity had he wished, but that he had voluntarily left the money with the company. It was clear from the decision in *Dewar's Case*, *supra*, that that was not sufficient. The commissioners in the present case had not found that the annuity was paid to the appellant, that he received it, that he enjoyed it, or that he exercised dominion over it. He (his lordship) was now asked by the Crown to send the case back to the commissioners in order that they might have an opportunity of enquiring whether the facts of this case were different from those of *Dewar's Case*, *supra*. There was no possible justification for such a course. The commissioners had had the appellant before them, all the facts had been open to them, and they had accepted the appellant's evidence that the whole of the annuity had not been paid to him solely because he did not need it. The appeal must be allowed.

COUNSEL: *Archer*, K.C., and *J. S. Scrimgeour*, for the appellant; *The Attorney-General* (Sir Donald Somervell, K.C.), and *R. P. Hills*, for the Crown.

SOLICITORS: *Johnson*, *Weatherall*, *Sturt* & *Hardy*, for *Parker*, *Rhodes*, *Cockburn* & *Co.*, Rotherham; *Solicitor of Inland Revenue*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Trinidad Petroleum Development Co. Ltd. *v.* Commissioners of Inland Revenue.

Lawrence, J. 15th and 18th May, 1936.

REVENUE—INCOME TAX—ASSESSMENT OF PROFITS—SET-OFF OF PREVIOUS LOSSES ALLOWED—LOSSES GREATER THAN PROFITS—NO TAX PAID—WHETHER PROFITS "BROUGHT INTO CHARGE TO TAX"—INCOME TAX ACT, 1918 (8 & 9 Geo. 5, c. 40), All Schedules Rules, rr. 19, 21—FINANCE ACT, 1926 (16 & 17 Geo. 5, c. 22), s. 33 (1).

Case stated by the Commissioners for the special purposes of the income tax.

The following facts were proved or admitted: During the year 1933–34, the appellant company made a payment of interest amounting to £16,032. Their profits for the year preceding the year 1933–34 amounted to £69,908. Under s. 33 (1) of the Finance Act, 1926, they claimed, and were granted, relief by being allowed to set off against those profits

£69,908 out of their losses amounting to £82,085 for the years 1927–28 and 1928–29, the balance of £12,177 being carried forward. An assessment was made on the appellants under r. 21 of the General Rules All Schedules of the Income Tax Act, 1918, as amended by s. 26 of the Finance Act, 1927. By r. 21: "(1) Upon payment of any interest of money . . . charged with tax under Sched. D . . . not payable, or not wholly payable out of profits . . . brought into charge, the person by . . . whom . . . such payment is made shall deduct thereout . . . the amount of the tax thereon . . . (2) Any such person shall . . . render an account to the Commissioners . . . of the amount so deducted . . ." By r. 19: "(1) Where any yearly interest of money . . . is payable wholly out of profits . . . brought into charge to tax, no assessment shall be made upon the person entitled to such interest . . . but the . . . profits . . . shall be assessed . . . on the person liable to the interest" and he "shall be entitled, on making such payment, to deduct and retain thereout . . . the amount of the tax thereon . . ." It was contended for the company on appeal to the Commissioners, that the fact that they had a right under s. 33 of the Finance Act, 1926, to have losses of previous years set off against the £69,908, did not prevent that sum from having been brought into charge to tax, that the £46,032 interest had accordingly been paid wholly out of profits brought into charge to tax and that the appellants were not assessable under r. 21. It was contended for the Crown that the £69,908 had not been brought into charge to tax, and that r. 21 was applicable. The Commissioners confirmed the assessment.

LAWRENCE, J., said that the appellants, although, for the year 1933–34, they had made a net profit of £69,908, had paid no tax for that year because they had brought forward previous losses which more than absorbed that profit. They contended that the £46,032 had been wholly paid out of profits brought into charge to tax, because it must be deemed to have been paid out of the £69,908, which was the amount of their assessment before deduction of previous losses. It was said that the effect of assessing the profits was to bring them into charge to tax, and that, as soon as that happened, r. 19, and not r. 21, applied. In his (his lordship's) opinion, the words of r. 19 were not co-terminous with the word "assessed" as applied to the profits in s. 33 of the Act of 1926. The words "brought into charge to tax" appeared in their ordinary interpretation to refer to profits which had suffered taxation. It was impossible to treat the assessment which preceded the granting of relief as fixing the amount of profits brought into charge. The appeal must be dismissed.

COUNSEL: *Needham*, K.C., and *J. S. Scrimgeour*, for the appellants; *The Solicitor-General* (Sir Terence O'Connor, K.C.) and *R. P. Hills*, for the respondents.

SOLICITORS: *Elvy Robb & Co.*; *Solicitor of Inland Revenue.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Commissioners of Inland Revenue *v.* Thompson.

Lawrence, J., 26th and 27th May, 1936.

REVENUE—INCOME TAX—RECEIVER APPOINTED BY DEBENTURE-HOLDERS—INTEREST RECEIVED BY—WHETHER ASSESSABLE IN RESPECT OF—PERSON SUCCEEDING TO TRADE—INCOME TAX ACT, 1918 (8 & 9 Geo. 5, c. 40), Sched. D., Rules Applicable to Cases I and II, r. 9; Miscellaneous Rules, r. 1; All Schedules Rules, rr. 4, 5, 6.

Case stated by the Commissioners for the special purposes of the income tax.

A company formed in 1896 in that year created first debentures bearing interest at 4 per cent. a year. The debentures provided that the holders might, at any time after the principal moneys became due, appoint a receiver of the property charged. In 1929, the company created second debentures bearing interest at 5 per cent., and with substantially the same provisions. The company charged its undertakings and all its property in respect of the debentures. In February, 1934, the holder of the first debentures appointed the respondent receiver of the property charged with the debentures. In 1935, the respondent was similarly appointed receiver in connection with the second debentures. After previous losses, the company made profits in 1934 and 1935. After the respondent's appointment, the company, with his concurrence, carried on its business exactly as before. Assessments under Sched. D., having been made on the respondent as receiver for the first and the second debenture-holders for the years ending the 5th April, 1934, 1935 and 1936, in respect of the profits of the trade arising during his receivership, he appealed against the assessments, contending that they were wrongly made on him as a receiver. It was contended for the commissioners, *inter alia*, (1) that, by the terms of the debentures, the receiver was appointed the holder's agent; (2) that, on that appointment, there was a succession to the trade within the meaning of Sched. D., Rules applicable to Cases I and II, r. 9 (2); and (3) that the respondent was the person entitled to the profits within the meaning of r. 1 of the Miscellaneous Rules applicable to Sched. D. The commissioners held that the legal ownership of the company's property did not pass to the receiver, and that he did not succeed to the trade, and they discharged the assessments.

LAWRENCE, J., said that the first question on which the case had been argued, namely, whether the assessments could properly be made on the receiver, turned primarily on r. 1 of the Miscellaneous Rules to Sched. D. He (his lordship) thought the respondent's contention that he did not receive the company's income within the meaning of that rule unsound. It appeared to him that a receiver taking possession of the company's property, and who carried on the company's business, must receive the company's income. Sections 78 and 264 of the Companies Act, 1929, were important as showing that the receiver was the person to pay income tax incurred to the 5th April next preceding his appointment, and therefore, presumably, so long thereafter as he remained in office. The receiver in fact received the proceeds of all the assets, whether capital or income, and in receiving the proceeds of the income assets he received the income within the meaning of the rule. Rule 15 of the General Rules applicable to All Schedules appeared to contemplate that a receiver, other than one appointed by the court, would be assessed in the ordinary course, being the person who received the income under r. 1 of the Miscellaneous Rules. Attention had been called to the fact that the receiver was the occupier for rating purposes: *Richards* v. *Kidderminster Overseers* [1896] 2 Ch. 212. It had been argued for the respondent that rr. 4, 5 and 6 of the General Rules supported his contention. On the contrary, those rules, particularly r. 5, appeared to operate in favour of the Crown. *Commissioners of Inland Revenue* v. *Paterson* (1924), 9 T.C. 163, did not assist the respondent. Attention had also been called for the respondent to *Gosling* v. *Gaskell* [1897] A.C. 575, and particularly to a quotation at p. 580 by Lord Halsbury of Lord Cranworth in *Cox* v. *Hickman* (1860), 8 H.L.C. 268, at p. 306. Lord Cranworth was there, however, dealing only with the ultimate beneficial interest in the profits, and not with the question whether the person actually receiving the income in the first instance was or was not the receiver. The appeal must be allowed. With regard to the second question, whether there had been a succession on the appointment of the receiver, there had, in his (his lordship's) opinion, been no such succession. He was not clear that that was a question of fact. Rule 9 of the Rules to Cases I and II of Sched. D., indicated most clearly what a succession meant. That rule contemplated a cessation of the trade, and that someone else must then succeed to it. That had not been the case here.

COUNSEL: *The Attorney General* (Sir Donald Somervell, K.C.), *J. H. Stamp* and *Hills*, for the appellants; *Burrows*, K.C., and *Alan Bell*, for the respondent.

SOLICITORS: *The Solicitor of Inland Revenue; Hall, Brydon & Chapman.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

[For Table of Cases previously reported in current volume see page iii of Advertisements.]

Correspondence.

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL.*]*

Searches—How Far Back?

Sir,—I shall be obliged if you or any correspondent will assist me with some guidance as to a solicitor's responsibility to his client in respect of searches for land charges on a purchase of land.

Restrictive covenants have to be registered against a purchaser at the time that they are imposed, but it does not appear that they are re-registered against subsequent owners, and in that case it seems that a solicitor acting for a purchaser must search back to 1926 against every intermediate owner, as the production of official search certificates with the title deeds seems to be the exception rather than the rule in practice (of course personal searches may have been made, in which case there is no certificate of search).

As time goes on, these searches will become more and more expensive. Moreover, a time will come when they will not extend as far back as 1926 because only thirty years' title will be abstracted—but nevertheless a purchaser will be fixed with notice of anything registered since 1926, even though he has not received all the names of intermediate owners to search against.

Have I misconceived the position, or will a solicitor acting for a purchaser of land always have to search against every owner since 1926 so far as official search certificates are not produced and, even then, if the title deduced does not extend back to 1926, leave his client with the risk of restrictions which have not been disclosed and could not be discovered?

A. DE F. MACMIN.

Basinghall-street, E.C.
14th August, 1936.

[We have submitted the above letter to one of our "Points in Practice" contributors and he has given the following reply: "Before 1926 the usual practice (and a usual practice of the profession would no doubt be taken into consideration by the court) was to search back to and including the last transaction for value, and at that time it is probable that a practitioner who carried out this usual practice would not be held negligent, on the theory that each former conveyancer had made the same searches. Since 1925, however, searches have assumed a far greater importance than before 1926, and doubtless it is strictly speaking necessary either to see certificates of search or to search back up to the end of 1925. In practice, however, this would often be a costly matter and, as our subscribers point out, could not be done when the title commences subsequent to 1925. The writer is disposed to believe that a conveyancer who searched back to the last transaction for value (including that transaction) would even now not be deemed negligent. This question in various forms has several times been put to us and until the matter has been put before the court cannot, we suggest, be answered with any certainty. It will be seen that we are in agreement with our subscriber's conception of the position generally."—ED., *Sol. J.*]

Obituary.

MR. A. ELLIS.

Mr. Alfred Ellis, solicitor, senior partner in the firm of Messrs. Ellis & Fairbairn, of Bedford-row, W.C., died at Amersham on Saturday, 29th August, at the age of sixty-nine. Mr. Ellis, who was admitted a solicitor in 1895, was a Justice of the Peace for Buckinghamshire. He was a lay-preacher for nearly fifty years, and in 1932 he was elected President of the Baptist Union of Great Britain and Ireland.

MR. F. M. GASCOIGNE.

Mr. Frederick Middleton Gascoigne, solicitor, of Hexham, died on Sunday, 23rd August, at the age of sixty-seven. Mr. Gascoigne was admitted a solicitor in 1890.

Long Vacation, 1936.

HIGH COURT OF JUSTICE.

NOTICE.

During the remainder of the Vacation, all applications "which may require to be immediately or promptly heard," are to be made to the Hon. Mr. Justice Lewis.

COURT BUSINESS.—The Hon. Mr. Justice Lewis will until further notice, sit in King's Bench Court IX, Royal Courts of Justice, at 11 o'clock on Wednesdays, commencing on Wednesday, 9th September, for the purpose of hearing such applications of the above nature, as, according to the practice in the Chancery Division, are usually heard in Court.

PAPERS FOR USE IN COURT.—Chancery Division.—The following Papers for the Vacation Judge are required to be left with the Cause Clerk in attendance at the Chancery Registrar's Office, Room 136, Royal Courts of Justice, before 1 o'clock, two days previous to the day on which the application to the Judge is intended to be made:—

(1) Counsel's certificate of urgency or note of special leave granted by the Judge.

(2) Two copies of notice of motion, one bearing a 5s. impressed stamp.

(3) Two copies of writ and two copies of pleadings (if any).

(4) Office copy affidavits in support, and also affidavits in answer (if any).

No Case will be placed in the Judge's Paper unless leave has been previously obtained or a Certificate of Counsel that the Case requires to be immediately or promptly heard, and stating concisely the reasons, is left with the papers.

N.B.—Solicitors are requested when the application has been disposed of, to apply at once to the Judge's Clerk in Court for the return of their papers.

URGENT MATTERS WHEN THE JUDGE IS NOT PRESENT IN COURT OR CHAMBERS.—Application may be made *in any case of urgency* to the Judge personally (if necessary), or by post or rail, prepaid, accompanied by the brief of Counsel, office copies of the affidavits in support of the application, and also by a Minute, on a separate sheet of paper, signed by Counsel, of the order he may consider the applicant entitled to, and also an envelope, sufficiently stamped, capable of receiving the papers, addressed as follows:—"Chancery Official Letter: To the Registrar in Vacation, Chancery Registrar's Office, Royal Courts of Justice, London, W.C.2."

The address of the Vacation Judge can be obtained on application at Room 136, Royal Courts of Justice.

CHANCERY CHAMBER BUSINESS.—The Chancery Chambers will be open for Vacation business on Tuesday, Wednesday, Thursday and Friday in each week, from 10 to 2 o'clock.

KING'S BENCH CHAMBER BUSINESS.—The Hon. Mr. Justice Lewis will sit for the disposal of King's Bench Business in King's Bench Judge's Chambers at 11 o'clock on Tuesday in each week.

PROBATE AND DIVORCE.—Summonses will be heard by the Registrar at the Principal Probate Registry, Somerset House, every day during the Vacation at 11.15 (Saturdays excepted).

Motions will be heard by the Registrar on Wednesdays, the 9th and 23rd September, at the Principal Probate Registry at 12.15.

Decrees will be made absolute on each Wednesday during the Vacation, except Wednesday the 7th October.

All papers for making Decrees absolute are to be left at the Contentious Department, Somerset House, on the preceding Thursday, or before 2 o'clock on the preceding Friday. Papers

for Motions may be lodged at any time before 2 o'clock on the preceding Friday.

The offices of the Probate and Divorce Registries will be opened at 10 a.m., and closed at 4 p.m., except Saturdays, when the offices will be opened at 10 a.m. and closed at 1 p.m.

Chancery Registrars' Office,
Royal Courts of Justice,
Room 136.

Legal Notes and News.

Honours and Appointments.

The Minister of Health, The Right Honourable Sir Kingsley Wood, M.P., has appointed Mr. H. J. RYAN to be his Assistant Private Secretary.

The Parliamentary Secretary to the Minister of Health, Mr. R. S. Hudson, M.P., has appointed Mr. S. F. WILKINSON to be his Private Secretary.

Mr. H. P. LANSDALE-RUTHVEN, Barrister-at-Law, has been appointed Legal Adviser to the Government of Sarawak. Mr. Lansdale-Ruthven was called to the Bar by Gray's Inn in 1933.

Professional Announcements.

(2s. per line.)

Messrs. Sharpe, Pritchard & Co., of 12, New-court, Carey-street, W.C., announce that Mr. ALED OWEN HUGHES, B.A. (Oxon), who served his articles with them and was placed in the Honours List of the Solicitors' Final Examination in 1929, joined the firm on the 1st September, when Mr. F. E. F. Barham, who joined the firm in 1891, retired.

The Solicitors Benevolent Association, of 2, Stone-buildings, Lincoln's Inn, W.C.2, announces that, after the 14th September, 1936, the offices will be at Clifford's Inn, Fleet-street, London, E.C.4.

Notes.

A party of twenty-five members and students of the legal profession left London last Thursday for a tour of Germany. The party includes twenty students who are visiting Germany as the guests of the Juristenbund. They will visit, among other places, Bremen, Hamburg, Berlin, Munich, Nurnberg, Frankfurt, and Hanover.

The Lancashire and Cheshire Students' Society of the Incorporated Association of Rating and Valuation Officers has now completed the final arrangements with the local authorities for the holding of evening lecture courses at Manchester and Preston for those who intend preparing for the examinations of the Association. Enquiries relating to the scheme should be addressed without delay to the Hon. General Secretary and Treasurer, 77, Princess-street, Manchester, 2.

AUTUMN ASSIZES.

The following days and places have been fixed for holding the Autumn Assizes, 1936:—

OXFORD CIRCUIT.—HUMPHREYS, J.—Tuesday, 13th October, at Reading; Saturday, 17th October, at Oxford; Wednesday, 21st October, at Worcester; Tuesday, 27th October, at Gloucester; Wednesday, 4th November, at Monmouth; Monday, 9th November, at Hereford; Saturday, 14th November, at Shrewsbury; Wednesday, 25th November, at Stafford.

NORTHERN CIRCUIT.—FINLAY, J., and LAWRENCE, J.—Thursday, 15th October, at Carlisle; Tuesday, 20th October, at Lancaster; Monday, 26th October, at Liverpool; Monday, 23rd November, at Manchester.

WESTERN CIRCUIT.—CHARLES, J.—Tuesday, 13th October, at Salisbury; Saturday, 17th October, at Dorchester; Thursday, 22nd October, at Wells; Wednesday, 28th October, at Bodmin; Tuesday, 3rd November, at Exeter. SWIFT, J., and CHARLES, J.—Saturday, 21st November, at Bristol. CHARLES, J.—Thursday, 3rd December, at Winchester.

NORTH WALES AND CHESTER CIRCUIT.—LEWIS, J.—Monday, 12th October, at Caernarvon; Monday, 19th October, at Ruthin; Thursday, 22nd October, at Chester.

SOUTH-EASTERN CIRCUIT.—HAWKE, J.—Tuesday, 13th October, at Cambridge; Saturday, 17th October, at Norwich; Friday, 23rd October, at Ipswich; Wednesday, 28th October, at Chelmsford. MACKINNON, J.—Wednesday 11th November, at Hertford; Saturday, 14th November, at Maidstone; Wednesday, 25th November, at Kingston; Thursday, 3rd December, at Lewes.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 10th September, 1936.

	Div. Months.	Middle Price 2 Sep. 1936.	Flat Interest Yield. £ s. d.	‡Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	115	3 9 7	2 19 10
Consols 2½%	JAJO	84¾xd	2 19 0	—
War Loan 3½% 1952 or after ..	JD	107⅛	3 5 3	2 18 5
Funding 4% Loan 1960-90	MN	118½	3 7 6	2 18 4
Funding 3% Loan 1959-69	AO	103⅜	2 18 0	2 16 0
Funding 2½% Loan 1956-61	AO	93⅜	2 13 5	2 17 3
Victory 4% Loan Av. life 23 years ..	MS	115xd	3 9 7	3 1 8
Conversion 5% Loan 1944-64 ..	MN	119⅝	4 3 7	1 19 3
Conversion 4½% Loan 1940-44 ..	JJ	109¾	4 2 0	2 8 2
Conversion 3½% Loan 1961 or after .	AO	107¼xd	3 5 3	3 1 7
Conversion 3% Loan 1948-53 ..	MS	104½	2 17 5	2 10 6
Conversion 2½% Loan 1944-49 ..	AO	101¼xd	2 9 4	2 6 1
Local Loans 3% Stock 1912 or after ..	JAJO	96⅜xd	3 2 0	—
Bank Stock	AO	381	3 3 0	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	88¼	3 2 4	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	96½	3 2 2	—
India 4½% 1950-55	MN	116¾	3 17 1	3 0 4
India 3½% 1931 or after	JAJO	99xd	3 10 8	—
India 3% 1948 or after	JAJO	87½xd	3 8 7	—
Sudan 4½% 1939-73 Av. life 27 years	FA	118	3 16 3	3 9 3
Sudan 4% 1974 Red. in part after 1950	MN	116	3 9 0	2 12 4
Tanganyika 4% Guaranteed 1951-71	FA	114	3 10 2	2 15 7
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	109	4 2 7	2 14 0
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	96	2 12 1	2 15 6
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	110	3 12 9	3 5 8
*Australia (C'mm'nw'th) 3¾% 1948-53	JD	104	3 12 2	3 6 9
Canada 4% 1953-58	MS	112	3 11 5	3 1 7
*Natal 3% 1929-49	JJ	101	2 19 5	—
*New South Wales 3½% 1930-50 ..	JJ	101	3 9 4	—
*New Zealand 3% 1945	AO	100xd	3 0 0	3 0 0
Nigeria 4% 1963	AO	114	3 10 2	3 4 4
*Queensland 3½% 1950-70	JJ	102	3 8 8	3 6 2
South Africa 3½% 1953-73	JD	108	3 4 10	2 18 0
*Victoria 3½% 1929-49	AO	101xd	3 9 4	—
CORPORATION STOCKS				
Birmingham 3% 1947 or after ..	JJ	98½	3 0 11	—
*Croydon 3% 1940-60	AO	99xd	3 0 7	3 1 2
Essex County 3½% 1952-72	JD	106½	3 5 9	2 19 8
Leeds 3% 1927 or after	JJ	95	3 3 2	—
Liverpool 3½% Redeemable by agreement with holders or by purchase ..	JAJO	105xd	3 6 8	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	80	3 2 6	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	96	3 2 6	—
Manchester 3% 1941 or after ..	FA	97	3 1 10	—
*Metropolitan Consd. 2½% 1920-49 ..	MJSD	100⅜	2 9 7	—
Metropolitan Water Board 3% "A" 1963-2003	AO	97½	3 1 6	3 1 9
Do. do. 3% "B" 1934-2003 ..	MS	97½	3 1 6	3 1 9
Do. do. 3% "E" 1953-73 ..	JJ	100	3 0 0	3 0 0
Middlesex County Council 4% 1952-72	MN	114	3 10 2	2 17 10
† Do. do. 4½% 1950-70	MN	116	3 17 7	3 1 6
Nottingham 3% Irredeemable ..	MN	96	3 2 6	—
Sheffield Corp. 3½% 1968	JJ	108	3 4 10	3 2 0
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture ..	JJ	115	3 9 7	—
Gt. Western Rly. 4½% Debenture ..	JJ	125	3 12 0	—
Gt. Western Rly. 5% Debenture ..	JJ	136½	3 13 3	—
Gt. Western Rly. 5% Rent Charge ..	FA	134⅓	3 14 4	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	131	3 16 4	—
Gt. Western Rly. 5% Preference ..	MA	120½	4 3 0	—
Southern Rly. 4% Debenture ..	JJ	114	3 10 2	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	111½	3 11 9	3 6 8
Southern Rly. 5% Guaranteed ..	MA	131½	3 16 1	—
Southern Rly. 5% Preference ..	MA	120½	4 3 0	—

*Not available to Trustees over par. †Not available to Trustees over 115.
‡In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

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Stock
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Approximate Yield with Redemption	
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3 4 4	
3 6 2	
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